

## **REMARKS**

The Office Action dated January 30, 2009 and the Advisory Actions dated July 16, 2009 and August 11, 2009 have been carefully reviewed and the foregoing remarks are made in response thereto. In view of the above claim amendments and following remarks, Applicants respectfully request favorable reconsideration of this application.

Claims 1 and 2 have been amended to incorporate the subject matter recited in claim 6. Thus, claims 1 and 2 should have been previously searched. Applicants assert, therefore, that the amended claims 1, 2 and 6 do not require a new search and thus can be entered into the application.

### **Rejection under 35 U.S.C. § 112**

Claims 1-8 and 39 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. The Office Action alleges that one skilled in the art would not conclude that the instant specification provided adequate support for a method comprising administration of compounds of Formula I where X is C<sub>2</sub>-C<sub>3</sub> alkenyl or C<sub>2</sub>-C<sub>3</sub> alkynyl as recited in the instant claims.

Without acquiescing to the merits of the rejection, Applicants have amended the claims to recite specific compounds as disclosed in the specification on page 74. Applicants submit the rejection is now moot and request withdrawal of the rejection.

### **Rejection under 35 U.S.C. § 103**

Claims 1-8 and 39 under 35 U.S.C. § 103(a) as allegedly obvious over U.S. Patent No. 5,962,437 to Kucera *et al.* ("Kucera I") in view of U.S. Patent No. 5,770,584 to Kucera *et al.* ("Kucera II") because there is allegedly insufficient factual support to show the claimed sub-genus of compounds has biological properties not processed by the broader genus of compounds disclosed in Kucera I. According to the Advisory Action of July 16, 2009, Applicants' remarks are "not persuasive because Applicant's are not claiming use of a 'small sub-genus' of compounds. Rather, Applicant's [*sic*] claims are similar in scope to the scope of compounds disclosed in Kucera." (*See* Advisory Action at page 2).

Without acquiescing to the merits of the rejection, the claims have been amended to recite methods for treating a host infected with respiratory syncytial virus (RSV) comprising administering to a host in need thereof an anti-RSV effective amount of two specific compounds: 3-dodecanamido-2-

ethoxypropyl-1-phosphocholine and 3-decanamido-2-ethoxypropyl-1-phosphocholine. Support for the amendments can be found in the previously presented claim 6.

Kucera does not disclose or suggest the two compounds recited in the amended claims. Indeed, Kucera I is silent with regard to compounds where  $R_2$  is an O coupled to an ethyl group. The fact that Kucera I discloses the  $R_2$  group as a  $C_6-C_{18}$  alkyl group would not motivate one of ordinary skill in the art to include an ethyl group as recited by the instant claims. Rather, the requirement of  $R_2$  group as a  $C_6-C_{18}$  alkyl group in Kucera I teaches away from the ethyl group in the instant claims because a skilled artisan would not explore the possibility of the lower alkyl groups at  $R_2$  position.

Kucera II fails to remedy the deficiency of Kucera I. First, Kucera II is directed to the treatment of hepatitis virus infections, not RSV. Due to the numerous variations of virus infections, there are not a finite number of identified, predictable effective treatments, based only on the compounds disclosed by Kucera II. A skilled artisan would not be motivated to modify the compounds indicated for treatment of hepatitis for the treatment of a different unrelated virus (RSV). Secondly, Kucera II fails to specifically suggest a  $C_9$  or  $C_{11}$  alkyl group at  $R_1$  position and an ethyl group at the  $R_2$  position to maintain the antiviral activity as in the claimed two compounds. Thus, there would be no motivation to combine the Kucera I and Kucera II references to reach the two compounds in the amended claims.

Accordingly, Kucera I in view of Kucera II does not render the amended claims obvious. Therefore, Applicants request withdrawal of the rejection.

#### Obvious-type double patenting rejection

Applicants submit that the previously submitted terminal disclaimers to overcome the obvious-type double patenting rejection are no longer necessary in view of the claim amendments herein. The subject matter of the amended claims is not disclosed nor suggested in any of U.S. Patents 5,962,437; 7,026,469 or 7,141,557 and as such, the terminal disclaimers are no longer applicable to the amended claims nor the present application. Applicants hereby petition for withdrawal under 37 C.F.R. § 1.182 of the previously submitted terminal disclaimers from the record of the present application. Applicants submit herewith the required petition fee.

**Conclusions**

It is respectfully submitted that the rejections to the claims have been overcome. Should the Examiner disagree, Applicants respectfully request a telephonic or in-person interview with the undersigned attorney to discuss any remaining issues and to expedite the eventual allowance of the claims.

Except for issues payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310.

Dated: **February 26, 2010**  
Morgan, Lewis & Bockius LLP  
Customer No. **09629**  
1111 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
202-739-3000

Respectfully submitted,  
**Morgan, Lewis & Bockius LLP**

/Robert Smyth/  
Robert Smyth  
Registration No. 50,801